1950.

File No. S. Bij 11/50

Legal DEPARTMENT
A BRANCH

Subject:— Bijapur Suit

Civil Suit No. 2 of 1950.

Ambaji Somanna Kalal — Plff

vs.

The State of Bombay — Deft

For a declaration that the property described in the plaint is of his ownership and for an injunction

(E)

(11)

S. Bijapur 11/50

File No.

S. Bij 11/50

C O N T E N T S.

Legal Department File No. S. Bij. 11/50

Sr.No.	R.I./O.No.	Subject	Pages.

Suits Bijapur.

C.S. No. 2/1950.

A. S. Kalal Pltf.

V/s.

The State of Bombay

Deft.

For a declaration that the property described in the plaint is of his ownership and for an injunction.

Information under rule 118 of L.O.Rs.

i) The No. of suit.	C.S.No.2 of 1950.
ii) The date on which and the court in which it was instituted.	The Civil Judge Senior Dn.Bijapur on 1-1-50.
iii) Names of all the parties.	Shri Ambaji Somanna Kalal V/S The Province of Bombay
iv) The amount of value of claim	Rs.5/- & court expenses.
v) The dates fixed by the court forthe first hearing.	6-1-50.
vi) Whether notice of the action has been given under Sec.80 of the C.Pr.C. and if so the date of delivery of such notice.	Yes; on 18-12-48.
2. The following papers shall be sent along with the reports :- (a) A copy of the plaint in the regional language together with copies of any documents or list of documents annexed to the plaint.	A copy of the plaint duly translated into English is enclosed (p-2) file No.II)
(b) Translation of the same typed in Half margin the more important of the statements there being distinctly marked with letters(a) and (b) etc. and notes being in the margin stating whether such statements are correct or not and if not in what respect they are in accurate.	The translation of the sale deeds in English are enclosed. The statement or persons are also traslated into English.
(c) Cause of the circumstances which led to the suit.	The cause of action for this suit arose on 6.8.48 as per order of the P.O.Bijapur Dn.Bijapur dated 6.8-48)p-99) file No,I)

A full and detailed statement of :

1) of the course which it is proposed to adopt namely whether to admit compromise or defend them suit and of the reasons for the same and.	The suit can be defended on the strenghh of the P.O.Bijapur Dn. order dated 6-8-1948 (p-99 file No.I)
ii) If it is proposed to defend the suit, of the ground on which it is proposed to defend base the the defence and of the evidence to be addueced.	A perusal of the sketch (p-45 file No.I) showin that the encroached are-a is a part of road area. The encroacher has neither any documentary evidence nor he proved adverse possession of 60 years against Govt.
D) if the case turns on documentary evidence (or the originals) relied on by the plaintiff (if probable) and by the defence.	There are no documents on which the plaintiff relie and there are also no documents relied on by defence.
(E) All papers and written proceedings whether in English or in any regional language connected with the subject matter of the suit together with translation in English of all important paper which are in regional language.	All important papers are translated into English.
(F) Statement in English containing ~~xxxxxxxx~~	

F) Statement in English containing brief description of all the documents referred to in clauses (B) & (e) above which are in regional language.	No documents. Only the statements of witnesses on behalf of plaintiff and the Govt. which are duly translated into English. The plaintiff claimed that the site shown in blue colour at page 45 file No.I belonged to him and not encroachment. The P.O. after holding enquiry under Sec.37(2) L.R.C. decided that the property vested in Govt.

For Collector, Bijapur.

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Information as required by rule 118(b) of the L.O.Rs.

Remarks on the paras of the plaint.

I. The site in question is clear encroachment as it forms a part of raod area. Hence the plaintiff's contension that, the area in question is in his enjoyment from the time of his ancestor is not tenable as he failed to prove adverse possession against Government.

II. In view of the facts described in the above para the P.O.Bijapur Dn's order is just and legal.

III -

IV -

V -

Vi a, b & c :- In view of the facts stated in para I & II above, the property in dispute clearly vests in Govt. Hence the plaintiff is not entitled to possession and the cost of the suit claimed by him.

For Collector, Bijapur.

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List of important documents referred to in clauses(d) and (e) of the report under rule 118 L.D.Rs.

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1) Hand sketch at page 45 file No.I.

2) Order of the P.O.Bijapur Dn.,Bijapur under Sec.37(2) d-ated 6-8-48(page 89 file No.I)

3) Statements of witnesses on behalf of plaintiff & Government (pages 83 to 97).

For Collector, Bijapur.

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Bijapur Civil Suit No.2 of 1950.

This is an encroachment suit. The plaintiff has no documentary evidence in his support and the suit is defensible. Sanction may, ~~xx~~ therefore, be accorded to the defence of the suit on the lines of the appended brief. A Written Statement is also put up for approval

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A-CR RTK 1/8

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY.
2.8.50.

Secy. RD. 2/8/50

DON
7.8.50

No 16916
d. 21.8.50

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In the Court of the Civil Judge, Senior Division, Bijapur.

Civil Suit No. 2 of 1950.

Ambaji Somanna Kalal ... ... Plaintiff.

vs.

The State of Bombay. ... ... Defendant.

The following is the written statement of the defendant, the State of Bombay.

1. The plaintiff's allegations as regards his alleged title to the site admeasuring 23' x 22' [held to be encroached upon by the Prant Officer] is denied.

2. It is also not admitted that site is in possession and enjoyment of the plaintiff since the time of his ancestors.

3. The suit land is the property of Government and the plaintiff is an encroacher on it.

4. The order of the Prant Officer in the inquiry under section 37(2) of the Land Revenue Code is correct and binding on the plaintiff.

5. The plaintiff has filed the suit without preferring all the appeals allowed by law against the Prant Officer's order. The suit is, therefore, barred under section 11 of the Bombay Revenue Jurisdiction Act.

6. The suit is also time barred under section 37(3) of the Bombay Land Revenue Code.

7. It is, therefore, submitted that the suit be dismissed with costs.

District Government Pleader.

I, _____ District Government Pleader, Bijapur. do hereby declare that what is stated in paragraphs 1 to 7 above is true according to the information received and believed to be true. This werification is made at on the day of 1950.

District Government Pleader, Bijapur.

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Civil Suit No.2 of 1950.

Issues.

1 Whether the plaintiff proves his title to the open site ?
2. Whether he has perfected his title by adverse possession ?
3. Whether the suit is barred under section 11 of the Bombay Revenue Jurisdiction Act ?
4. Whether the suit is barred under section 37(3) of the Bombay Land Revenue Code ?
What orders ?

No further issue is sought.

9-9-1950. Sd. A .C.Sequeira.
Civil Judge,Sr.Dn.,
Bijapur.

" True Copy "

Dist.Govt.Pleader, Bijapur.

Suits :
Bijapur.
For a declaration that the property described in the plaint is of his ownership and for an injunction.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 11479.

Bombay Castle, 11th August 1950.

Letter from the Collector of Bijapur, No. LAW 198, dated the 2nd May 1950—

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.

Civil Suit No. 2 of 1950.

Ambaji Somanna Kalal ... ... Plaintiff ;

versus

The State of Bombay ... ... Defendant.

Forwarding the papers in the suit noted in the margin; and requesting sanction to its defence.

Memorandum to the District Government Pleader, Bijapur, No. 11099, dated the 4th July 1950—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

AXB Leg. H 82—1

[*P.T.O.*

To

*The Revenue Department,
*The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

No. of 1950.

Copy forwarded for information and guidance to

-. Submitted after issue.
File in - S. Bijapur / 50 (Crew).
12/10

A. Sctr.

by 14.10.

S Bij/D.C 21.10
13/10

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BIJAPUR CIVIL SUIT No. 2 OF 1950.

Chronological Statement of Facts.

This suit is filed by Shri Ambaji Somanha Kalal of Sindgi, District Bijapur for a declaration that the property described in the plaint is of his ownership and for an injunction against Government restraining it from disturbing his possession.

2. The plaintiff owns a house in Katakar lane in village Sindgi and adjacent to the house is an open space. On 14th January 1948, the Mamlatdar of Sindgi reported that a portion shown in blue in the sketch at p. 45 admeasuring 23′ × 22′ was encroached upon by the plaintiff and recommended an inquiry under section 37(*2*) of the Land Revenue Code. The Prant Officer, Bijapur Division, thereupon, held a regular inquiry in the matter and by his order No. L.N.D. 59, dated the 6th August 1948, held the site to be of the ownership of Government.

3. On 17th December 1948, the plaintiff gave a notice of suit under section 80 of the Civil Procedure Code and on 5th January 1950 he filed the present suit in the Court of the Civil Judge, Senior Division, Bijapur.

Grounds of Defence.

The plaintiff should be put to strict proof of his alleged title to the suit land. His allegations that the land is his ancestral property or that he has become the owner thereof by adverse possession should not be admitted. The plaintiff has no documentary evidence in his favour and witnesses he produced before the Prant Officer were not believed by that officer. The suit land is open road land in front of houses and, therefore, presumption arises that it vests in Government under section 37(*1*) of the Land Revenue Code (see also Vasta *v.* Secretary of State, 45 Bom. 789). It is the usual practice of owners of houses in the villages to make use of open spaces in front of or behind their houses and even to incorporate them in their properties. It is impossible for Government to prevent such user of road lands in villages but it does not thereby become juridical possession which can ripen into title by lapse of time. Government witnesses have testified that the site was open and that the plaintiff has encroached upon it. The encroachment must, therefore, be recent and plaintiff's claim to it on grounds of adverse possession would not be tenable (see Suraji *v.* Secretary of State, 39 Bom.L.R. 216).

2. It should also be contended that the plaintiff has filed this suit without preferring all the appeals provided by law against the Prant Officer's order.

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The suit is, therefore, barred under section 11 of the Revenue Jurisdiction Act, 1876. The Prant Officer's order was passed on 6th August 1948. The plaintiff has filed this suit on 5th January 1950. The suit is, therefore, also time barred under section 37(*3*) of the Land Revenue Code even excluding the period of notice under section 15 (*2*) of the Limitation Act.

3. It should, therefore, be contended that the suit fails and should be dismissed with costs.

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Received on 5-1-1950.
Registered on 5-1-1950.
Decided on 27-12-1951.
Duration 1 year 11 months & 22 days.

In the Court of the Civil Judge Senior Division, at Bijapur.

Civil Suit No. 2 of 1950.

Shri V.G.Thobbi. Ambaji Somanna Kalal of Sindgi Taluka Sindgi. Plff.

Vs.

Shri A.C.Angadi. (Dist.Govt.Pleader). The Province of Bombay. Deft.

Claim Rs 5/-. V.P. Rs 5/-.

Judgment.

The plff sues to obtain a perpetual injunction restraining the defendant from disturbing his possession and enjoyment of the suit premises. The plff states as follows:- He is the owner of the suit premises situate at Sindgi, consisting of a house and an open site. The site on which the house stands measures 40 feet from the south to the north, and 22 feet from the east to the west. The open site measures 24 feet from the south to the north, and 22 feet from the east to the west. The plff and his ancestors have been in possession of the suit premises since ancient times. A sketch thereof is produced with the plaint. On 21-7-1948, the Deputy Collector made an order that the suit premises belong to the Government. The Government servants obstruct the plff in his possession and enjoyment of the same. The plff has given a notice of this suit to the Govt under Sec. 80 of the C.P.C. on 17-12-1948.

2. The deft by its written statement Exh. 13 contends as follows:- The site in dispute measures 23 feet by 22 geet. The plff has no title thereto and was not in possession and enjoyment thereof since the time of his ancestors. The said site is the Govt's property and the plff is an encroacher thereon. The order made by the Deputy Collector under section 37(2) of the Bombay Land Revenue Code is correct and binding on the plff. Without preferring all the appeals allowed by law against that order, the plff has filed this suit. The suit is, therefore, barred under Sec. 11 of the Bombay Revenue Jurisdiction Act, and is

also time barred under section 37(3) of the Bombay Land Revenue Code.

3. My learned predecessor Mr. A.C.Sequeira framed the following issues:-

(1) Whether the plff proves his title to the open site ?

(2) Whether he has perfected his title by adverse possession?

(3) Whether the suit is barred under Sec. 11 of the Bombay Revenue Jurisdiction Act ?

(4) Whether the suit is barred under sec. 37(3) of the Bombay Land Revenue Code ?

(5) What orders ?

4. My findings on the above issues are:-

(1) No. (2) No.

(3) No. (4) No. (5) See below.

Resons.

5. This suit is the outcome of an enquiry made by the Deputy Collector under Section 37(2) of the Bombay Land Revenue Code regarding the plff's claim to an open site situate within the gavthan of Sindgi. It appears that there was a dispute regarding that site between the plff and some villagers since 1945. In that year the Circle Inspector prepared the sketch of the site which is produced at Exh. 36 in this case. In that sketch the plff's house is shown in the south-west corner. Adjoining the house, to its north east lies the open site in dispute which is shaded in blue pencil in the sketch. There is no dispute, and there was never any, regarding the plff's title to his house shown in the south-west corner of the sketch and the site on which it stands. The dispute is limited to the open site measuring 23 feet by 22 geet and shaded in blue pencil in the sketch. On the east of the plff's house and the south of the said open site in dispute, there is a lane four feet wide. On the north of the plff's house and the west of the open site in dispute, there is a lane six feet wide. To the west of the latter lane lies the house of Hussensa Wd. Hasansa Walikar. Between that house and the plff's house lies an open space 12 feet and 9 inches wide leading to Rajesa Maktumsa's house which is on its west. The open site in dispute links the aforesaid two lanes lying on its south and west. It is not possible to pass from one lane into the other without

going through the said open site in dispute.

6. In the plaint in this suit, the subject matter of dispute is described very vaguely, and is alleged to include not only the aforesaid open site shaded in blue in the sketch Ex. 36; but also the site of the plff's house situate on its south west. But as I have stated above, there was never any dispute, and there is none even now, regarding the plff's title to his said house and the site on which it stands. In the sketch Ex. 36 the open site in dispute shaded in blue pencil is shown to measure 23 feet from the east to the west, and 22 feet from the north to the south. In the plaint the sa said open site in dispute is alleged to be 22 feet from the east to the west, and 24 feet from the north to the south. The boundaries given of the plff's house and the open site in dispute in the plaint do not tally with those shown in the sketch Ex. 36. The plff has annexed a sketch of his own to the plaint. He has prepared that sketch according to the description given by him of his house and the open site in dispute in the plaint. In his deposition before the Court the plff admits that the position, measurements and boundaries shown of his house and the open site in dispute in the aforesaid sketch Ex. 36 are correct. It, therefore, follows that the sketch produced by him with the plaint and the description given by him of his house and the open site in dispute in the plaint are incorrect.

7. In January 1948 the Mamlatdar held a preliminary enquiry regarding the dispute about the open site shaded in blue pencil in the aforesaid sketch Ex. 36 prepared by the Circle Inspector. The Mamlatdar then made the report Ex. 40 dated the 14th January 1948 to the Deputy Collector recommending that an enquiry should be held about the plff's claim to the open site in dispute under section 37(2) of the Bombay Land Revenue Code. The Deputy Collector accordingly held an enquiry under Sec. 37(2) of the Bombay Land Revenue

Code. Before him the plff claimed the open site in dispute by inheritance from his ancestors and also by adverse possession for a period of more than sixty years. The Deputy Collector was of the opinion that the plff failed to substantiate his title to the open site by either inheritance or adverse possession. He, therefore, made the order Exh. 31 rejecting the plff's claim to the open site in dispute and declarating that it belongs to the Government. It is not, however, clear on what day he made that order, and when it was communicated to the plff.

8. The Deputy Collector's aforesaid order Ex. 31 originally bore the date 22-7-1948. But that date has been scored out and the date 6-8-1948 is written below it. Under sub-section (3) of Section 37 of the Bombay Land Revenue Code, a notice of the order made under sub-section (2) of that section has to be served on the claimant. Such notice is generally served in Form-C. Exh. 38 is such a notice in Form-C served on the plff about the abovesaid order Exh. 31 made by the Deputy Collector. The notice Exh. 38 served on the plff is dated 22-7-1948, and it is stated therein that the Deputy Collector made his aforesaid order Ex. 31 on the same day, namely 22-7-1948. The Deputy Collector's order Exh. 31 was transmitted to the Mamlatdar for taking further action thereon. The Mamlatdar forwarded it to the Circle Officer under his endorsement dated 4-9-194 made thereon. In that endorsement the Mamlatdar says that the notice in Form-C, namely Ex. 38, was separately sent to the village Officers for service on the plff. It is, therefore, clear that the notice Ex. 38 regarding the Deputy Collector's order Ex. 31 was not served on the plff till 4-9-1948. Before bringing this suit the plff served the notice Ex. 27 dated 17-12-1948 on the Government under sec. 80 of the C.P.C. In that notice he says that he got the notice Ex. 38 seven or eight days earlier, that is to say, about 9-12-1948. It appears that the Circle Inspector to whom the Mamlatdar forwarded the Deputy Collector's order Ex. 31, informed the plff of the same and took his statement on 9-12-1948. In cross-examination the plff says that the Deputy Collector's orderEx. 31 was made on 6-8-1948, because it bears that date now. In cross-examination he also says that he got

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the notice Ex. 38 before 9-12-1948. But now long before that date he got the notice is not elicited from him. It is not proved that the notice Ex. 38 was served on the plff before the 1st December 1948, or that the Deputy Collector's order Ex. 31 was communicated to him in any other way before that date. On 5-1-1950 the plff filed this suit challenging the Deputy Collector's said order Ex. 31.

9. There is not much evidence in this case. In proof of his title to the open site in dispute the plff relies on his own deposition, the Gharvasti plan Ex. 42, and the list o of owners of the premises shown therein Ex. 43. The plff has given his age in the plaint as 45 years, and in his depositio before the Court as 50 years. He has examined no witness in support of his case. On behalf of the Government also no oral evidence is led. See the Govt pleader's pursis Ex. 41.

10. The Gharvasti plan and the list of the owners of the permises shown therein, Exs. 42 and 43, were prepared in the year 1872. The Gharvasti plan is not drawn to scale and is merely a rough sketch showing the relative positions of the premises in the gavthan of Sindgi village as they existed in 1872. The plff's learned pleader argues that the premises No. 32 in the Gharvasti plan is the plff's present residen--tial house which is shown in the south-west corner of the aforesaid sketch Ex. 36, and that the premises No. 43 in the Gharvasti plan is the present open site in dispute which is shaded in blue in the sketch Exh. 36. The learned Govt.pleader on the other hand argues that the premises No. 36 in the Grarvasti plan is the plff's present residential house. The listof owners of the premises Ex. 43 shows that the premises Nos. 32,43 and 36 belonged to Sivubai Kom Ambaji, Saifu Musalman, and Peeru Devaji respectively. The plff says that Sivubai Kom Ambaji was his paternal grand mother and that he has inherited his present residential house from her. He says that both his paternal grand parents died before his birth. He does not know when they died. Beyond his bare word, there

is no evidence to show that his paternal grand mother's name was Sivubai Kom Ambaji. According to the learned Govt pleader, Peeru Devaji was the plff's ancestor and the plff has inherited his present residential house from him. The plff does not admit that Peeru Devaji was his ancestor. No evidence has been led on behalf of the Government to show that Peeru Devaji was the plff's ancestor. According to the plff's learned pleader's argument, the open site in dispute belonged to Saifu Musalman in 1872. The plff does not say that he purchased it from Saifu Musalman or his heirs. Nor is there any evidence to show that any ancestor of his purchased it from Saifu Musalman or his heirs. The plff's case as made by him in the plaint as well as his deposition before the Court is that both the open site in dispute and his residential house are properties inherited by him from his ancestors. That case of his is quite inconsistent with his learned pleader's argument that the open site in dispute belonged to Saifu Musalman in 1872. If we compare the Gharvasti plan Ex. 42 with the sketch Ex. 36 carefully, it will appear that the premises Nos. 32 and 43 in the Gharvasti plan cannot be the plff's present residential house and the open site in dispute as argued by his learned pleader. On the east of the plff's residential house and south of the open site in dispute there is a lane now as shown in the sketch Ex. 36. There is no such lane shown on the east of the premises No. 32 and south of the premises No. 43 in the Gharvasti plan Ex. 42. On the north of the open site in dispute there is at present the house belonging to Maktumsa Abdulsa Bandar as shown in the sketch Ex. 36. But on the north of the premises No. 43 there is shown a lane in the Gharvasti plan Ex. 42. That lane does not appear in the sketch Ex. 36. Similarly the argument advanced by the learned Government pleader that the premises No. 36 in the Gharvasti plan is the plff's present residential house, is not borne out by that plan. There are a lane and an open space on the west of the premises No. 36, but no lane on its east in the Gharvasti plan; whereas there is a lane on the east of the plff's present residential house as shown in the sketch Ex. 36. I hold that it is not prove

that the plff's present residential house is either the premises No. 32 or the premises No. 36 in the Gharvasti plan. It is not also proved that the premises No. 43 in the Ghar--vasti plan is the present open site in dispute. From the evidence on record it is not possible to identify the plff's residential house and the open site in dispute in the Gharvas plan Ex. 42.

1. There is no evidence regarding the title of either party to the open site in dispute. In the absence of clear evidence, there can arise two presumptions regarding title in the case of open sites situate within the gavthan of a villag If the open site is occupied by any person, that is to say, is in his possession, a presumption may arise under sec. 110 of the Indian Evidence Act that he is the owner thereof. In such a case, the burden of proving that the person in possession is not the owner, lies on the party who affirms that he is not the owner. If the open site is unoccupied, that is to say, is not in the possession of any person, a presumption may arise under section 37(1) of the Bombay Land Revenue Code that it is the property of the Govt. The latter presumption under sec. 37(1) of the Bombay Land Revenue Code can arise only where the open site is unoccupied and the former presumption under sec. 110 of the Indian Evidence Act does not arise. The question for determination in this case is which of the two presumptions holds good in this suit.

12. Every kind of user does not constitute such possess--ion as to give rise to a presumption of ownership under Sec.110 of the Indian Evidence Act: A man may keep fodder or tether his cattle on a piece of land for reasons of conveni--ence, without intending to exclude others from the use of the land and without objection from his neighbours or interference from the state, the revenue officers being satisfied that he does not intend to take possession of the land and is not asserting any kind of title. Such acts of user do not constitute possession. If a temporary structure

is erected on a piece of land, it may again not amount to possession, though if a structure stands for many years on a piece of land it would normally lead to a presumption of possession. No strict criteria, however, can be laid down as to what acts necessarily connote possession and what do not. Criteria would vary with the circumstances of each case. The local pressure on land, the vigilance of neighbours or revenue officers, the period for which the acts of user have continued, the existence of a general custom allowing such acts without objection, these would be circumstances to be taken into consideration in appropriate cases in deciding the nature of the alleged possession. Where, however, an intention to exclude the possession, user or control of others is proved or can be presumed, however slight the actual acts of user, there should be no hesitation in deciding possession to be proved. Acts like erecting a permanent structure or putting up a substantial hedge, especially when such structure or hedge has stood for some time, would generally indicate possession. See the commentary under the head"Instructions" in K.S.Gupte's Bombay Land Revenue Code (3rd Edition,1946) at page 164. The plff in his deposition before the Court says that the open site in dispute was enclosed by the walls of surrounding buildings belonging to neighbours. He alleges that the Circle Inspector pulled down a portion of some wall adjoining the open site in dispute in December 1948. The allegation seems to be quite false and is not supported by any evidence on record. If the wall of any neighbouring building adjoining the open site in dispute had been demolished by any officer of the Government, the owner of that building would not have acquiesced in the demolition thereof and kept quiet. The sketch Exh. 36 prepared in 1945 shows that there were no walls on either the east or the west of the open site in dispute and that the lane on the south opened on to the open site. It is not the plff's case that any wall adjoining the open site in dispute was demolished by any officer of the Government or anybody else before 1945. He admits that there had been no change in the position of the open site and its surroundings since he came to know of things till 1948.

He does not say that he ever erected any wall or hedge round the open site in dispute or erected any structure thereon. The sketch Ex. 36 shows that on a small portion of the open site in dispute there was a "Fattre", that is to say, a temporary shed of corrugated iron sheets in 1945. That temporary shed might have beenerected by the plff, though he does not even claim to have done so in his deposition before the Court. The only act of user that he claims to have done on the open site in dispute is tethering cattle. He has led no evidence to show when he began to tether his cattle there, and for how long he has done so. There is also no evidence to show when the aforesaid "Fattre" or temporary shed of iron sheets was erected on the open site in dispute and how long it stood there. I hold that it is not proved that the plff did any act of user on the open site in dispute indicating his intention to exclude others from the use thereof, and to take possession thereof in assertion of his title thereto. In "Suraji Fulaji v. Secretary of State" (39 Bombay Law Reporter 216) at page 223 it is observed as follows:-

"There is no doubt that the oral evidence sufficiently shows that he has been using a large portion of the area in question for the purpose of tethering cattle and storing grass and, as regards one part of the site, that he has for a number of years had an <u>otli</u> thereon. All this, in our opinion, cannot establish anything beyond undisturbed user for a certain period. The erection of hedges to the west and south of the plot does not seem to help his case materially because those hedges have been erected to the west and south of the existing buildings. The more recent erection of a hedge to the north of plot Y cannot, in our opinion, even when combined with the evidence of user, be sufficient to prove or to amount to legal possession ..... Though it appears that the defendant has made no attempt to contradic or refute the evidence led by the plff as to his acts of

user, it cannot be said that the plff's case is strenthened by any weakness in the defendant's case. We do not think that the evidence adduced for the plff and the circumstances in this case suffice to prove such possession by him as would justify an inference of his title".

For the above reasons I hold that the plff in this case is not and has never been in such legal possession of the open site in dispute as to give rise to a presumption of his ownership thereof under sec. 110 of the Indian Evidence Act.

13. There is no evidence to show that the open site in dispute was ever occupied by any private person. Even if the plff's learned pleader's argument that the open site now in dispute is the premises No. 43 in the Gharavasti plan Ex. 42 be assumed to be correct, it does not help the plff much. If the open site in dispute be the premises No. 43 in the Gharvasti plan, the list of owners of the premises Ex. 43 would show that Saifu Musalman was in possession thereof in 1872. For, it was in that year that the said list and the Gharvasti plan were prepared. It is not known when Saify Musalman died and when he ceased to be in possession thereof. There is no evidence to show that the open site in dispute or the premises No. 43 in the Gharvasti plan has been in the possessio of any private person after 1880. It is not, therefore, proved that the open site in dispute was in the possession of any private person during the period of seventy years before this suit. Even if the open site in dispute were in the possession of any private person in very remote ancient times, the Deputy Collector was right in treating it as unoccupied for the purpose of his enquiry under section 37(2) of the Bombay Land Revenue Code in 1948. From the circumstances in this case a clear presumption, in my opinion, arises under section 37(1) of the Bombay Land Revenue Code that the open site in dispute belongs to the Government.

14. For all the above reasons I answer issue No.1 in this case in the negative. The next question for determination is whether the plff has acquired any title to the open site in dispute by adverse possession for a period of sixty years before the suit.

I have pointed out above that he is not and has never been in possession of the open site in dispute. He says that he has been in possession thereof since his grand father's time. He admits that his grand father died before his birth. From his age given in the plaint he does not appear to be more than 46 years old now. Beyond his bare word he has led no evidence whatever regarding his possession of the open site in dispute. His evidence regarding his possession thereof is absolutely unreliable. I, therefore, answer issue No.2 also in the negative.

15. The Deputy Collector's order Ex. 31 which the plff challenges in this suit was appealable. Under sec. 203 of the Bombay Land Revenue Code an appeal lay from that order to the Collector and the period of limitation to prefer the appeal was sixty days from the date of the order. As I have pointed out above, that order Ex. 31 was originally dated 22-7-1948, but that date was scored out and the date 6-8-1948 was subsequently substituted therefor. Further that order was not communicated to the plff till December 1948. In the notice Ex. 38 by which the order was communicated to the plff, he was informed that the order was made on 22-7-1948, and that if he desired to refer any appeal therefrom he should prefer the appeal to the Collector within sixty days from that date. By the time that the plff got the notice, the period of sixty days mentioned therein for preferring the appeal had already expired. The plff preferred no appeal from the Deputy Collector's order Ex. 31. In preferring no appeal from that order he might have been misled by the wrong notice served upon him of that order For the Government it is contended that this suit is barred under sec. 11 of the Bom-Revenue Jurisdiction Act, 1876, because the plff preferred no appeal from the Deputy Collector's said order Ex. 31. That section provides that no civil court shall entertain any suit against the Government on account of any act or omission of any revenue officer unless the plff first proves that

previously to beinring his suit, he has presented all such appeals, as, within the priod of limitation allowed for bringing such suit it was possible to present. As I have said above, the Deputy Collector's order Ex. 31 was not communicated to the plff till December 1948, and the period of limitation to present an appeal therefrom had expired in September or October that year. It was not, therefore, possible for him to present any appeal from the Deouty Collector's said order. He cannot, therefore, be said to have failed to present any appeal which it was possible for him to present from that order within the meaning of section 11 of the Bombay Revenue Jurisdiction Act. In "Secretary of State vs. Husenabu" (33 Bom.L.R. 361) the plff was misled by the notice served upon him in that case into not preferring some appeal which might have been preferred. It was, therefore, held in that case that the Govt was not entitled to rely on sec. 11 of the Bombay Revenue Jurisdiction Act in bar of the suit. As the plff in this suit also has been misled by the notice Ex. 38 served upon him into not preferring any appeal from the Deputy Collector's order Ex. 31, I hold that the Government is not entitled to rely on section 11 of the Bombay Revenue Jurisdiction Act to defeat this suit.

16. For a suit to challenge an order under sub-section(2) of section 37 of the Bombay Land Revenue Code, subsection (3) of that section provides a limitation period of one year from the date of the order. The Deputy Collector's order Ex. 31 in this case being dated 22-7-1948 or 6-8-1948 the learned Government pleader argues that this suit instituted on 5-1-1950 is time barred. Sec. 37(3), however, contains an important proviso as follows:-

"Provided that in the case of an order under subsection (2) the plff has had due notice of such order".

I have pointed out above that the notice Ex. 38 of the Deputy Collector's order was served on the plff before 9-12-1948. There is no evidence to show that it was served before the 1st December 1948. I shall assume that it was served on him on that date. Even so, this suit was not brought within one year from that date. But section 15(2) of the Indian Limitation Act comes to the plff's help. It provides that in computing the period of limitation prescribed for any suit of

which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded. Section 29(1)(a) of the Indian Limitation Act provides that for the purpose of determining any period of Limitation prescribed for ay suit by any special or local law, the provisions contained in secs. 9 to 18 of that Act shall apply in so far as and to the extent to which they are not expressly excluded by such special or local law. The Bombay Land Revenue Code is a special and local law. The provisions of sec. 15(2) of the Indian Limitation Act are not expressly excluded by any provision in the Bombay Land Revenue Code. Hence the provi--sions of Sec. 15(2) of the Indian Limitation Act are appli--cable in computing the period of limitation for this suit under sec. 37(3) of the Bombay Land Revenue Code. Notice of this suit Ex. 27 was given by the plff to the Govt under Sec. 80 of the Civil Procedure Code. Under sec. 15(2) of the Indian Limitation Act the period of that notice, namely two months, has, therefore, to be excluded in computing the limitation period for this suit. Assuming that the notice Ex. 38 was served on the plff on 1-12-1948, and excluding the two months' period of the notice Ex. 27, it will be found that this suit is in time.

17. In this suit the plff claims an injunction with respect to the site of his residential house and the open site in dispute. I have pointed out above that the Government never disputed the plff's right to the site of his residential house, and never threatened to disturb his possession and enjoyment thereof. The plff has, therefore, no cause of action to obtain an injunction with respect to the site of his residential house. As regards the open site in dispute which is shaded in blue pencil in the sketch Ex. 36, the plff has failed to prove his title and possession thereof. The suit regarding the same, therefore, fails.

ORDER.

18. The plaintiff's suit is dismissed. The plaintiff to pay the defendant's costs and bear his own.

27-12-1951. Sd/- M.M.Nadakarni.
Civil Judge,Sr.Dn.

True copy.
Akurdi
Advocate
Bijapur

C. P. C. Schedule I, Appendix B, No. 24

Form A 87 L.

ಮೂಲ ಪಾಠಯಲ್ಲಿ
ಮು ಳು ಮು ನಾ ಮೆ
(ಪ್ರ. ೨೦, ಶಾ. ೬, ೬).

(ಫಾರ್ಮ ನಂಬರು ೧,
ಪರಿಶಿಷ್ಟ ದ, ಶೆಡ್ಯೂಲಿಂದ)

ಕುರುಮುನಾಮೆ

ಇವರಾ ಕೋರ್ಟ ಆದ ಸೆಂಟ್ಲಿಲ್ಲ- ಜಡ್ಜ ಕೋರ್ಟನಲ್ಲಿ
ಮುಕ್ಕಾಮು ಇಲಾಕೆಯ. ಇಲ್ಲಿ

ಲೀಲ. ದಿವಾಣಿ ಮುಳದಮೆ ನಂಬರು ೨ ಸನ್ ೧೯೨೨ನೆ ಕ

೧) ಕೊಬ್ಬಳ್ಳಿ ಸೆಲ್ಲಮ್ಮ ಅಗಿ ಕೆಲಸ ಬ್ಯಾಲಳ್ಳಿ
ಮೆ ಲಕ್ಷ್ಮಣ ತಂದೆ ಳ್ಳ ಕೆಸಮು ಗಳಲ್ಲಿ
ನೀಲು ಕೊಂಡಕ್ಕ ಲಾಲು ೧/೧೦ ಪರ್ಕ- } ವಾದಿ.

ಏರುದ್ಧ

೧) ಪಿ ಬೆಟ್ಟ ವಿಠಪ್ಪನ ಸ್ವಾಧಾರಲಚೆಗೆ
ಕೆಲ್ಲು. ಕೆಲಕ್ಕೆಲ್ಲ ನೀಲು ಉಲ್ಲೂ.
ಸುಗ ಕೊಂಡ- } ಸ್ವತಿವಾದಿ.

೧. ಡಾಖಲು ಕಾರೀಮು ೨೫ ತಿಂಗಳು ೧ ಸನ್ ೧೯೨೫
೧. ಶೈಲ ಕಾರೀಮು ೨೫ ತಿಂಗಳು ೧ ಸನ್ ೧೯೨೫.

ದಾವೆ ಕೂಪಾಯಿ

ವಾದಿಯ ಪಾವೆ ಹೀಗೆ ಅದಲ್ಲ—

(೧) ಈಲು ತಾವಾ ಕೊಂಡ ನೆಲ ಪಿಲ್ಲ ೧೦ ಲಾಲ್ಲ
ಸೆಲ್ಲಲ್ಲ ಸಂಬಂಧ ಗ ಮೆಲದಲ್ಲಿ ಕೆಲಸ ಕೆರ. ಲಂಡಲಿಯಲ್ಲಿ
ನಾಡಿ ಬಲ್ಲ ಮೆಲುಗಿ ಮ ಕೂಲು ಲಾಗ ಕೆಲಗೆ ಬಂಡೆ
ವೈಕಾಲ ನಡೆದು ಅವರ ಚಿಕೆಲುಮೆಲೆ ಕೆಲಗೆ ಬಂಡೆಲ ಮೆಲಿಬಿ
ಗಾರಲ್ಲ ಮೆ.

ಕೆಲಲ್ಲಿ ಮೆಲುಗಿನ ಲಂಡನ ನಾ. ಮ ಕೆಲಂ ಚೆಲ್ಲಿ
ಕೆಲಕೆರ ನಾವರ ಪಿಲುಗಿ ಮ ಕಾಗಾಲಯ ಕೆಲುಲಕೆಲಿ
ಭಾಗವಾನ ಮ ಲಾಲ್ಲಿ ನೀಲು ಕಲ್ಲಿ ಮುನಾಹಲ್ಲ ನಾವರ
ಮೆಲುಗಿ ಲುಲ್ಲಿ ಲಂಡ್ಲ ಉಲಮ್ಲ ಮ ನಲ್ಲಿ ನೀಕಾಲ್ಲ ಬಂಡಿಗಲ
ನಾವರ ಮೆಲುಗಿ ಮ ಮೆಲಿಕೆಲಂಡ್ಲ ಕೆಲಲಾಲಿ ಮನ್ನೆಗಾಲನೀನ
ಮೆಲುಗಿ ಕೂಲಿ ಕಾರ ಲಿಲಕೆಲಲು ಅವರಲ್ಲಿ ನಿಲ್ಲ
ನಾವಲಾಕಲ ಮಲ್ಲ ಲಾಗ ಮ ಕೂಲು ಲಾಗ ನಾಲಲ ನಾವಲಾಲ್ಲ
ಲಾಲು ಲಂಡಿಕೆಲಂಡ್ಲರ ಕೆಲಂ ಚೆಲಿಲು ಮಾಲಲಾ ಮೆಲ್ಲಿಲು
ಮೆಲು ಲುಲ್ಲಿ ಲಾಗಕ್ಕಾಲ ಲಂಡಿಕೆಲಂಡ್ಲರ ಲಲ್ಲಿ ಮೆಲು ಚೆಲಿಲ
ಮೆಲಿಲು ಮೆಲು ಕೂಲಿ ಕೆಲಲ ಮಲ್ಲಿಕೆಲಲು ಲಲ್ಲಿಲಾಲ
ಕೆಲಲ ಮಲಿಲ ನಾವಲ ಮ ನಾಲಲ ಕಾಲಾಲಲ ಲಾಲಲ್ಲ

ಮುಳ್ಳು ಈ ದಾವೆಯು ವಿಷ್ಣುವ ಬಗ್ಗೆ ಇವನು ಕೊಡಾಯಿಗಳ ರಕ್ಷಮುಖ್ಯ ಇವನಿಗೆ ವರ್ಸಸ್

ಗಂತೆ ಈ ತಾರೀಖಿನಿಂದ ಹಣವನ್ನು ಕೊಡುವ ತಾರೀಖಿನ ವರೆಗೆ ಆಗುವ ಅದರ ಮೇಲಿನ ಬಡ್ಡಿಯ ಸಹಿತ ತೆರಬೇಕು.

ವಿಷ್ಣುವ ಯಾದಿಯು

ವಾದಿಗೆ ಆಸ್ತಿ ವಿಷ್ಣು.	ರೂ.	ಆ.	ಪೈ	ಪ್ರತಿವಾದಿಗೆ ಆಸ್ತಿ ವಿಷ್ಣು.	ರೂ.	ಆ	ಪೈ
೧. ಅಸಲುಜಗೆ ಸ್ಟ್ಯಾಂಪು				೧. ವಜಾಬಾಕಿಯ ಅಥವಾ ವಿರುದ್ಧ ದಾವೆಯ ಬಗ್ಗೆ ಸ್ಟ್ಯಾಂಪು.			
೨. ಮುಖತ್ಯಾರನಾಮೆಗೆ ವಿಷಯ				೨. ಮುಖತ್ಯಾರನಾಮೆಗೆ ವಿಷಯ			
೩. ಜಾಮಲಾಪ ಶಾಗಪ (ನಿಶಾನಿ) ಗಳಿಗೆವಿಷಯ				೩. ಜಾಮಲಾಪ ಶಾಗಪ (ನಿಶಾನಿ) ಗಳಿಗೆ ವಿಷಯ ಒಟ್ಟು ಮುಂದಿನ ಪ್ಯಾರಾಪ ಮೇಲೆಕೊಟ್ಟಿದ್ದು.			
ಒಟ್ಟು ಮುಂದಿನ ಪ್ಯಾರಾಪ ಮೇಲೆಕೊಟ್ಟಿದ್ದು.	3	೧೩	-	೪. ಸಾಕ್ಷಿದಾರರ ಹೊಟ್ಟೆಬೆಟ್ಟ			
೪. ಸಾಕ್ಷಿದಾರರ ಹೊಟ್ಟೆಬೆಟ್ಟ				೫. ಕ್ಲೀಷರಫ ಫೀ			
೫. ಹೆಚ್ಚಿಸಿ ರಕ್ಷಮಿಸಿ ಮೇಲೆ ಕ್ಲೀಷರಫ ಫೀ				ವಿರುದ್ಧ ದಾವೆಯ ಮೇಲೆ ಕ್ಲೀಷರಫ ಫೀ			
ವಿರುದ್ಧ ದಾವೆಯ ಮೇಲೆ ಕ್ಲೀಷರಫ ಫೀ				೬. ಪ್ರೊಸೆಸ್ಸುಗಳ ಎಜಾವಣೆ			
೬. ಪ್ರೊಸೆಸ್ಸುಗಳ ಎಜಾವಣೆ				೭. ಕಮಿಷರರಫ ಫೀ			
೭. ಕಮಿಷರರಫ ಫೀ				೮. ಭಾಷಾಂತರಫ ಫೀ			
೮. ಭಾಷಾಂತರಫ ಫೀ				೯. ಪ್ರತಿಲು ಮಾಡುವ ಬಗ್ಗೆ ಫೀ			
೯. ಪ್ರತಿಲು ಮಾಡುವ ಬಗ್ಗೆ ಫೀ				೧೦. ಪಹಣಿಗಳ ಬಗ್ಗೆ ಕೊಟ್ಟಿದ್ದು			
೧೦. ಪಹಣಿಗಳ ಬಗ್ಗೆ ಕೊಟ್ಟಿದ್ದು							
೧೧. ತಾರೀಖಪಾರರನ್ನು ಬದಲಾಯಿಸುವ ಬಗ್ಗೆ ಹಾಕಿದಪಕ್ಷ ಅರ್ಜಿಯ ಮೇಲೆ ಸ್ಟ್ಯಾಂಪು.							
ಒಟ್ಟು	೧೨	೦೦	-	ಒಟ್ಟು	೩೫	೧೩	-
ಸಾಮಂಜಸವಾದ ಖರ್ಚು				ಸಾಮಂಜಸವಾದ ಖರ್ಚು			
ಅಸಲುಜಗೆಯ ಮೇಲೆ				ವಿರುದ್ಧ ದಾವೆಯ ಮೇಲೆ			
ಕ್ಲೀಷರಫ ಫೀಯ ಮೇಲೆ				ಕ್ಲೀಷರಫ ಫೀಯ ಮೇಲೆ			
ಪ್ರೊಸೆಸ್ಸುಗಳ ಮೇಲೆ				ಪ್ರೊಸೆಸ್ಸುಗಳ ಮೇಲೆ			
ಜಾಮಲಾಪ ಶಾಗಪ (ನಿಶಾನಿ) ಗಳ ಮೇಲೆ (ಮುಂದೆ ನೋಡಿರಿ.) ೫, ೬, ೨೦, ೨೧, ೨೨, ೨೫, ೨೬, ೩೩, ೩೪, ೨೫ ಈ	3	೧೭	-	ಜಾಮಲಾಪ ಶಾಗಪ (ನಿಶಾನಿ) ಗಳ ಮೇಲೆ (ಮುಂದೆ ನೋಡಿರಿ.) ೫, ೬, ೯, ೧೦, ೧೧, ೧೨, ೨೪.	3	೧೫	-
ಜಾಕಿ	೧೪	೦೦	-	ಜಾಕಿ	೧೪	೦೦	-

ಈ ಕೊಟ್ಟ ಸಜ್ಜ ಗಳ ಗಳಿಗೇ ಇವನು ಕೊಡಬೇಕಾದ ಖರ್ಚಿನ ಗಳಿಗೆ ಕೋರ್ಟಿನ ಕಟ್ಟಳೆಯಂತೆ ಮುಂದೆ ಸಾಲಿ ಮಾಡಿ ಮುಂದೆ ಕೊಡಿಸಿದ ಕೋರ್ಟಿನ ಮೂಲಕ ಕೊಡಿಸಲ್ಪಡುವದು.

ಸಹಿ. Ak. Neelamanavar

ಸಹಿ. V.I. Hubli

ಸಹಿ. A.A. Angadi

ಸಹಿ. M.M. Gudal Karmi

ಈ ಕೋರ್ಟಮೂಲಕವಾಗಿಯಾ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಕೊಡಿಸಿ ಕೊಡುವದರಲ್ಲಿ ಬರುವ ಪಕ್ಷದಲ್ಲಾ ಅವರು ಕಾಲ ಕಾಲಕ್ಕೆ ಮಾಡಿಸಿ ಮುಂದಾಗಲೂ ಪೈಸಲೆಯಾಗಲಿಕ್ಕೆ ಅವರು (ತಡುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೆವಜುಗಳು, ಅವೇಲು ಮಾಡಿದ್ದಕ್ಕೆ ಆ ಪ್ರಾಣಿಯಿಂದ ಹೊಂಗೆ ಕಾಪಸಾಯುವದಕ್ಕೆ ಕಾಪಸಾಗುವದು (ಅಂದರೆ ಆವೆ ಕಾಪಸಾಯುವದರಲ್ಲಿ ಬರುವದು).

True copy

Ahmad

37 -B

Suits:
Bijapur.
For a declaration that the property described in the plaint is of his ownership and for an injunction.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 5718.
Bombay Castle, 17th April 1952.

Read Government Resolution, Legal Department No. 11479, dated 11th August 1950.

Endorsement from the District Government Pleader, Bijapur No. 1049, dated the 27th December 1951, stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Bijapur on 27th December 1951, when the following order was passed :-

In the Court of the Civil Judge (Senior Division), Bijapur.	:	
Civil Suit No. 2 of 1950.	:	
Ambaji Somanna Kalal.. .. Plaintiff; vs. The State of Bombay .. .. Defendant.	:	

" The plaintiff's suit is dismissed. The plaintiff to pay the defendant's costs and bear his own".

Endorsement from the District Government Pleader, Bijapur No. 19, dated the 9th January 1952, forwarding uncertified copy of the judgment.

RESOLUTION: The result of the suit is recorded.

By order of the Governor of Bombay,

original E.P. Bhamgara

E.P. Bhamgara,
Assistant Secretary to Government.

To

The Revenue Department,

The Collector of Bijapur,

The District Government Pleader, Bijapur.

HSP/15/4 17/4 Sabha for Sign 15/4 D.S. (Civil)